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No. 800-8

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*In the Supreme Court of the United States*

October Term, 1949-1950

JOINT ANTI-FASSIST REFUGEE COMMITTEE, PETI-  
TIONER

v.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE  
UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE DIS-  
TRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION



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# ***In the Supreme Court of the United States***

**OCTOBER TERM, 1949**

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**No. 556**

**JOINT ANTI-FASCIST REFUGEE COMMITTEE, PETITIONER**

**v.**

**J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.**

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***ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT***

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**BRIEF FOR RESPONDENTS IN OPPOSITION**

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## **OPINIONS BELOW**

The order of the District Court for the District of Columbia dismissing the complaint was entered without opinion (R. 35). The opinion of the Court of Appeals for the District of Columbia Circuit (R. 36) is reported at 177 F. 2d 79.

## **JURISDICTION**

The judgment of the Court of Appeals was entered on August 11, 1949 (R. 49). A petition for rehearing, filed August 26, 1949 (R. 50), was de-

nied on September 22, 1949 (R. 51). On December 12, 1949, by order of Mr. Chief Justice Vinson, the time for filing a petition for a writ of certiorari was extended to, and including, January 25, 1950 (R. 53). The petition for a writ of certiorari was filed on January 25, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

#### QUESTION PRESENTED

Whether petitioner has any legal standing or right to challenge a designation, made by the Attorney General pursuant to instructions issued by the President under Executive Order 9835, that petitioner is a communist organization.

#### STATUTE AND EXECUTIVE ORDER INVOLVED

Section 9A of the Hatch Act, 53 Stat. 1148, 5 U. S. C., Supp. II, 118j, and Executive Order 9835, 12 F. R. 1935, are set forth in the Appendix, *infra*, pp. 17-29.

#### STATEMENT

On March 21, 1947, the President, "by virtue of the authority vested in [him] by the Constitution and statutes of the United States, including the Civil Service Act of 1883 (22 Stat. 403), as amended, and section 9A of the act approved August 2, 1939 (18 U. S. C. 61i),<sup>1</sup> and as President and Chief Executive of the United States," issued Executive Order 9835 (12 F. R. 1935) to establish standards and machinery for determining the loyalty of federal employees and applicants. The

<sup>1</sup> Now 5 U. S. C., Supp. II, 118j.

Executive Order provided for the investigation of all persons now employed by the Federal Government or applying for such employment, for the establishment of Loyalty Boards in each department or agency, and for the establishment of a Civil Service Commission Loyalty Review Board. The Department of Justice was directed to furnish the Loyalty Review Board with "the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means." (Part III, Section 3). In turn, the Loyalty Review Board was directed to disseminate such information to all departments and agencies (Part III, Section 3a). *Infra*, pp. 24-25.

The standard prescribed by the Executive Order for the refusal of employment, or the removal from employment, on grounds relating to loyalty is that "on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States." (Part V, Section 1). One of the activities and associations which "may" be considered in connection with the



determination that reasonable grounds exist for belief that a person is disloyal is membership in, affiliation with, or sympathetic association with any organization listed by the Attorney General (Part V, Section 2 f). *Infra*, pp. 26-27.

On November 24, 1947, the Attorney General addressed a letter to the Chairman of the Loyalty Review Board, listing organizations and groups determined by him to fall within the description of Part III, Section 3, of Executive Order 9835. 13 F. R. 1471. *Infra*, pp. 31-38.<sup>2</sup> Petitioner was included in this list. By letter dated December 4, 1947, the Chairman of the Loyalty Review Board transmitted a copy of the Attorney General's letter to the various departments and agencies, pursuant to Part III, Section 3a, of the Executive Order. 13 F. R. 1471. *Infra*, pp. 29-30. In September 1948, the Attorney General divided the listed organizations into the separate categories named in the Executive Order, and petitioner was designated as a communist organization. This, too, was transmitted by the Chairman of the Loyalty Re-

<sup>2</sup> The letter states (Appendix, *infra*, pp. 36-37):

After the issuance of Executive Order No. 9835 by the President, the Department compiled all available data with respect to the type of organization to be dealt with under that order. The investigative reports of the Federal Bureau of Investigation concerning such organizations were correlated. Memoranda on each such organization were prepared by attorneys of the Department. The list of organizations herein certified is based on their recommendations as reviewed by the Solicitor General, the Assistant Attorneys General, and the Assistant Solicitor General, and my subsequent careful study of the recommendations of all.

view Board. 13 F. R. 1635. See Appendix, *infra*, pp. 38-47.

Petitioner alleges that, as a result of this designation and publication by the Attorney General, its ability to carry out its charitable activities of collecting and disbursing funds for the benefit of anti-fascist refugees who fought against the Franco Government in Spain has been irreparably damaged. (R. 4-5.) The injuries alleged are these: (a) the Bureau of Internal Revenue has deprived petitioner of its status as a tax exempt organization; (b) petitioner has been refused licenses required of organizations soliciting funds; (c) many former contributors, including present and prospective federal employees, have reduced or discontinued contributions; (d) many potential contributors, including present and prospective federal employees, have declined to make contributions; (e) petitioner has encountered increased difficulty in renting space to conduct activities, and reservations of facilities have been cancelled; (f) prominent speakers and entertainers refuse to participate in petitioner's activities; (g) and members and other participants have been subjected to public shame and ridicule, thereby discouraging further participation (R. 7-8).

This action was brought on February 10, 1948, to enjoin respondents, the Attorney General and the Chairman and members of the Loyalty Review Board of the Civil Service Commission, from designating and publicizing the name of petitioner as a

communist organization, to direct respondents to remove petitioner's name from the list of designated communist organizations, to make a public statement of this removal, and to take no action based on the inclusion of petitioner's name in the list of designated communist organizations. Petitioner further prayed for a declaratory judgment that Executive Order 9835, and Section 9A of the Hatch Act, as applied by the Executive Order, are unconstitutional because repugnant to the First, Fifth, Ninth, and Tenth Amendments (R. 8, 10). Simultaneously, petitioner moved to convene a three-judge court pursuant to 28 U. S. C. 380a, and for a preliminary injunction (R. 10, 11).

Respondents, in turn, moved to dismiss the complaint for want of a justiciable controversy between the parties and for failure to state a claim upon which relief can be granted (R. 34). Following a hearing, the District Court, on June 4, 1948 dismissed the complaint and denied the motion for a preliminary injunction (R. 35). The Court of Appeals, one judge dissenting, affirmed (R. 49).

#### ARGUMENT

In this action, petitioner seeks to attack the constitutionality of the Federal government's loyalty program. Although, in our opinion, the constitutionality of the loyalty program is clear (see *United Public Workers v. Mitchell*, 330 U. S. 75), it is unnecessary to determine that problem here; the constitutional question is not present in the instant



case for want of a justiciable controversy and of any legal standing in petitioner to challenge the actions it condemns. The fact that it would be convenient for the parties to have the validity of the loyalty program promptly adjudicated cannot create jurisdiction where none exists. "The courts have no power to consider in isolation and annul an act of Congress on the ground that it is unconstitutional; but may consider that question 'only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act.'" *Alabama Power Co. v. Ickes*, 302 U. S. 464, 479; *Federation of Labor v. McAdory*, 325 U. S. 450, 463.<sup>3</sup> "The obstacle is not procedural. It inheres in the substantive law, in the well settled rules of equity, and in the practice in cases involving the constitutionality of legislation." Brandeis, J. concurring in

<sup>3</sup> That the Federal Declaratory Judgment Act does not enlarge the basic jurisdiction of the Court and does not create controversies where none existed before has been affirmed many times by this Court. *E.g.*, *Colegrove v. Green*, 328 U. S. 549, 551-552; *Coffman v. Breeze Corps.*, 323 U. S. 316, 324; *Aetna Life Ins. Co. v. Haworth*, 300 U. S. 227, 240; *United States v. West Virginia*, 295 U. S. 463, 475; *Nashville, C. & St. L. Ry. Co. v. Wallace*, 288 U. S. 249, 262.

In this connection, it should be pointed out that the Administrative Procedure Act, 60 Stat. 237, 5 U. S. C. 1001 *et seq.* also offers no support to petitioner. Section 10(a) thereof, partially quoted by petitioner (Pet. 60), provides that "any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof." 5 U. S. C. 1009(a). Since there is no relevant statute herein defining "adversely affected or aggrieved," it is plain that the test of justiciability remains the same, i.e., that there be a legal wrong.

*Ashwander v. Tennessee Valley Authority*, 297 U. S. 288 at 341.<sup>4</sup>

1. The legal incidence of a challenged administrative finding, comparable to that presented here, which this Court found not to involve any justiciable legal rights was pertinently described in *United States v. Los Angeles & St. L. R. Co.*, 273 U. S. 299, 309-310: "The so-called order here complained of is one which does not command the carrier to do, or to refrain from doing, any thing; which does not grant or withhold any authority, privilege or license; which does not extend or abridge any power or facility; which does not subject the carrier to any liability, civil or criminal; which does not change the carrier's existing or future status or condition; which does not determine any right or obligation." And see *C. & S. Air Lines v. Waterman Corp.*, 333 U. S. 103, 113; *Federal Power Comm'n v. Hope Gas Co.*, 320 U. S. 591, 619; *Rochester Tel. Corp. v. United States*, 307 U. S. 125, 130-131; *United States v. Atlanta, B. & C. R. Co.*, 282 U. S. 522, 527; *Ex parte Williams*, 277 U. S. 267, 271; *Penna. Federation v. P. R. R. Co.*, 267 U. S. 203, 215; *Penna R. R. v. Labor Board*, 261 U. S. 72, 85; *Standard Scale Co. v. Farrell*, 249 U. S. 571, 574; *Employers Group*,

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<sup>4</sup> It is also pertinent to observe that "the most fundamental principle of constitutional adjudication is not to face constitutional questions but to avoid them, if at all possible." Frankfurter, J. concurring, in *United States v. Lovett*, 328 U. S. 303, 318 at 320.

*Etc. v. National War Labor Board*, 143 F. 2d 145, 147 (C. A. D. C.), certiorari denied, 323 U. S. 735; *National War Labor Board v. Montgomery Ward & Co.*, 144 F. 2d 528 (C. A. D. C.), certiorari denied, 323 U. S. 774; *National War Labor Board v. United States Gypsum Co.*, 145 F. 2d 97 (C. A. D. C.), certiorari denied, 324 U. S. 856, rehearing denied, 324 U. S. 890.

This analysis squarely applies to the action of respondents, pursuant to Executive Order 9835, in making public the challenged designation of petitioner as communist. Neither the Hatch Act, the Executive Order, nor the Attorney General's list contains any regulation or directive limiting the operation or conduct of petitioner's affairs. Petitioner remains perfectly free to collect and disburse funds in the same manner as it has always done. It is free to conduct meetings and other functions, to express itself freely through its officers and members. It is not prevented from uttering, or publishing and distributing its beliefs. Cf. *Martin v. Struthers*, 319 U. S. 141. Neither the statute, the Executive Order, nor the Attorney General's list requires the resignation of petitioner's members nor do they bar the entry of new members. They contain no directive to other federal, state or municipal officials which in any way subjects petitioner to the contingency of future administrative action. They subject neither petitioner nor its members to any criminal or civil



penalties, either immediate or postponed. Cf. *Shields v. Utah Idaho R. Co.*, 305 U. S. 177. In short, in no way is petitioner's own existing or future legal status changed. Cf. *Rochester Tel. Corp. v. United States*, 307 U. S. 125; *La Crosse Tel. Corp. v. Wis. Employment Relations Board*, 336 U. S. 18, 24. It therefore has no standing to contest the action taken by respondents.

2. Examination of the specific injuries alleged demonstrates that the requisites of justiciability are entirely missing. To recapitulate, the injuries alleged are that, because of the publication by respondents, (a) the Bureau of Internal Revenue has deprived petitioner of its status as a tax exempt organization; (b) petitioner has been refused licenses required of organizations soliciting funds; (c) many former contributors, including federal employees, have reduced or discontinued contributions; (d) many potential contributors, including federal employees, have declined to make contributions; (e) petitioner has encountered increased difficulty in renting space to conduct activities, and reservations of facilities have been cancelled; (f) prominent speakers and entertainers refuse to participate in petitioner's activities; and (g) members and other participants have been subjected to public shame and ridicule, thereby discouraging further participation. (R. 7-8).

In considering these allegations, it must be again emphasized that petitioner's legal status is un-

altered by the Hatch Act, the Executive Order, and the Attorney General's list. So considered, it is clear that petitioner's first allegation of damage has no basis in fact. The tax status of petitioner is determined solely by Section 101(6) of the Internal Revenue Code, 26 U. S. C. 101(6), which grants an exemption to charitable corporations "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation." If petitioner were previously entitled to an exemption, it is still so entitled. Petitioner's quarrel is with the Commissioner of Internal Revenue, not with respondents who exercise no functions under the Internal Revenue Code in this connection; its remedy lies in a proceeding against the Commissioner in a proper case under the Code, not against respondents. So far as the record shows, petitioner has not seen fit to avail itself of the legal remedy thus afforded.

For the same reason, petitioner's allegation that it has been refused licenses to solicit funds is also defective. The grant of such licenses by States or municipalities depends upon the laws or ordinances of those polities. In no way does the statute, Executive Order, or the Attorney General's list purport to define petitioner's status under those laws or ordinances. It is apparent that petitioner is now entitled to such licenses to the same extent that it was prior to its designation as communist since neither its organization, its purposes nor its

operations has changed. Again, petitioner's quarrel is with those local officials, not respondents and it is not shown that petitioner has taken any legal action to vindicate its reputation or its rights.

The remaining allegations of damage amount to no more than that respondents have, by defamation, adversely affected petitioner's advantageous relationships with others. But this defamation, if it be such,<sup>5</sup> has no legally operative effect upon such relationships. The injuries of which petitioner complains largely arise from the force of public opinion and not from the direct action of respondents. In the first place, the statute, the Executive Order, and the Attorney General's list are intended solely to secure the employment in the Federal Government of those loyal to our constitutional form of government.<sup>6</sup> Neither on their face, nor in their operation, do they purport to control petitioner's relationships with any other persons or to impose any legal consequence upon such relationships.

The designation of petitioner as communist has no mandatory effect even upon federal employees.<sup>7</sup>

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<sup>5</sup> Neither the complaint, the briefs below, nor the petition denies the correctness of the Attorney General's designation of petitioner as communist.

<sup>6</sup> The determination of the fitness of a government employee is an executive function, normally immune from judicial supervision. *Keim v. United States*, 177 U. S. 290, 292, 293; *Friedman v. Schwellenbach*, 159 F. 2d 22 (C.A.D.C.), certiorari denied, 330 U. S. 838.

<sup>7</sup> It should be noted that no federal employees are parties to this proceeding. Nor is it alleged that any federal em-



The Attorney General's list merely furnishes information to the various federal agencies. The standard for denying federal employment is that "on *all* the evidence reasonable grounds exist for belief that the person involved is disloyal to the United States." The letters of the Attorney General and the Chairman of the Loyalty Review Board specifically state that membership in, affiliation with, or sympathetic association with, a designated organization is simply one piece of evidence which may or may not be helpful in arriving at a conclusion as to the action which is to be taken in a particular case. (Appendix, *infra*, pp. 30, 37.) Accordingly, federal employees are not unconditionally barred from participation in petitioner's activities, and their membership is only one factor to be considered. We do not have, therefore, the direct and near-automatic disruption of important business relationships which in other cases has led the Court—in order to prevent the complete destruction of major economic or business interests by invalid regulation—to consider challenges to governmental

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ployee who participated in petitioner's activities has been specifically threatened with dismissal from federal employment because of such participation. As to such federal employees, no justiciable controversy could arise until an imminent threat of their discharge from federal employment arose. Cf. *United Public Workers v. Mitchell*, 330 U. S. 75, 86-91. It seems clear that petitioner can have no greater standing to sue in this respect than its individual members. The complaint herein not only fails to allege any specific threat of discharge to its members who are government employees but it does not even allege that it is appearing for and on behalf of such members to protect them against discharge.

action on the part of persons against whom that action was not directed.<sup>8</sup> Cf. *Truax v. Raich*, 239 U. S. 33; *Pierce v. Society of Sisters*, 268 U. S. 510; *Columbia Broadcasting System v. United States*, 316 U. S. 407, 417, 419.

3. The gravamen of the complaint thus resolves itself to the alleged damage to "the favorable reputation, moral support, and good will of the American people enjoyed by plaintiff" (R. 5). But it is well settled that public officials are *absolutely* privileged to publish even false and defamatory matter in the exercise of official duties. *Spalding v. Vilas*, 161 U. S. 483; *Gregoire v. Biddle*, 177 F. 2d 579 (C. A. 2); *Laughlin v. Rosenman*, 163 F. 2d 838 (C. A. D. C.); *Jones v. Kennedy*, 121 F. 2d 40 (C. A. D. C.), certiorari denied, 314 U. S. 665; *Glass v. Ickes*, 117 F. 2d 273 (C. A. D. C.), certiorari denied, 311 U. S. 718; *Cooper v. O'Connor*, 99 F. 2d 135 (C. A. D. C.), certiorari denied, 305 U. S. 643; *Mellon v. Brewer*, 18 F. 2d 168 (C. A. D. C.), certiorari denied, 275 U. S. 530. See American Law Institute, *Restatement of Torts*, §§ 558, 591. And it is plain that this alleged defamation was an official communication as to matters within the authority of respondents.<sup>9</sup> Petitioner's contention that there

<sup>8</sup> The complaint contains no allegation as to the number or proportion of petitioner's membership which consists of federal employees, or of the extent of the claimed injury attributable to the alleged dropping out of federal employees.

<sup>9</sup> It is to be noted that there is no allegation of malice or personal ill-will.

is no privilege if the authority pursuant to which respondents acted is unconstitutional overlooks the important principles of public policy upon which the privilege is grounded, as well as the uniform history of the doctrine. "The public interest requires that persons occupying such important positions \* \* \* should speak and act freely and fearlessly in the discharge of their important official functions" (*Yaselli v. Goff*, 12 F. 2d 396, 406 (C. A. 2), affirmed, 275 U. S. 503, repeated in *Gregoire v. Biddle*, *supra*, at 580), and their privilege does not depend upon the ultimate outcome of a judicial determination of the validity of the particular authority under which they act or speak.

Nor is this privilege limited to actions for money damages, as petitioner asserts (Pet. 74). The privilege is an absolute one, and the complainant has no cause of action or claim of infringed right to assert. It is as important to the full and fearless exercise of public functions to free high government officials from the necessity of defending their public statements in equity suits as in damage actions. The foundation of the doctrine of privilege is that, on the whole, the public interest in just, efficient, and responsive government is better served by leaving the correction of unfair or defamatory public statements to the countermeasures of publicity than by the threat of judicial trials of their truth or fairness.



## CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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*Solicitor General.*

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FEBRUARY 1950.

## APPENDIX

1. Section 9A of the Hatch Act, Act of August 2, 1939, c. 410, 53 Stat. 1147, 1148, 5 U. S. C., Supp. II, 118j:

(1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.

(2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person.

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2. EXECUTIVE ORDER 9835

PREScribing PROCEDURES FOR THE ADMINISTRATION  
OF AN EMPLOYEES LOYALTY PROGRAM IN THE  
EXECUTIVE BRANCH OF THE GOVERNMENT

Whereas each employee of the Government of the United States is endowed with a measure of trusteeship over the democratic processes which are the heart and sinew of the United States; and

Whereas it is of vital importance that person employed in the Federal service be of complete and unswerving loyalty to the United States; and

Whereas, although the loyalty of by far the overwhelming majority of all Government employees is beyond question, the presence within the Government service of any disloyal or subversive person constitutes a threat to our democratic processes; and

Whereas maximum protection must be afforded the United States against infiltration of disloyal persons into the ranks of its employees, and equal protection from unfounded accusations of disloyalty must be afforded the loyal employees of the Government:

Now, Therefore, by virtue of the authority vested in me by the Constitution and statutes of the United States, including the Civil Service Act of 1883 (22 Stat. 403), as amended, and section 9A of the act approved August 2, 1939 (18 U. S. C. 61i), and as President and Chief Executive of the United States, it is hereby, in the interest of the internal management of the Government, ordered as follows:

#### PART I.—INVESTIGATION OF APPLICANTS

1. There shall be a loyalty investigation of every person entering the civilian employment of any department or agency of the executive branch of the Federal Government.

- a. Investigations of persons entering the competitive service shall be conducted by the Civil Service Commission, except in such cases as are covered by a special agreement between the Commission and any given department or agency.



b. Investigations of persons other than those entering the competitive service shall be conducted by the employing department or agency. Departments and agencies without investigative organizations shall utilize the investigative facilities of the Civil Service Commission.

2. The investigations of persons entering the employ of the executive branch may be conducted after any such person enters upon actual employment therein, but in any such case the appointment of such person shall be conditioned upon a favorable determination with respect to his loyalty.

a. Investigations of persons entering the competitive service shall be conducted as expeditiously as possible; provided, however, that if any such investigation is not completed within 18 months from the date on which a person enters actual employment, the condition that his employment is subject to investigation shall expire, except in a case in which the Civil Service Commission has made an initial adjudication of disloyalty and the case continues to be active by reason of an appeal, and it shall then be the responsibility of the employing department or agency to conclude such investigation and make a final determination concerning the loyalty of such person.

3. An investigation shall be made of all applicants at all available pertinent sources of information and shall include reference to:

a. Federal Bureau of Investigation files.

- b.* Civil Service Commission files.
- c.* Military and naval intelligence files.
- d.* The files of any other appropriate government investigative or intelligence agency.
- e.* House Committee on un-American Activities files.
- f.* Local law-enforcement files at the place of residence and employment of the applicant, including municipal, county, and State law-enforcement files.
- g.* Schools and colleges attended by applicant.
- h.* Former employers of applicant.
- i.* References given by applicant.
- j.* Any other appropriate source.

4. Whenever derogatory information with respect to loyalty of an applicant is revealed a full field investigation shall be conducted. A full field investigation shall also be conducted of those applicants, or of applicants for particular positions, as may be designated by the head of the employing department or agency, such designations to be based on the determination by any such head of the best interests of national security.

## PART II. INVESTIGATION OF EMPLOYEES

1. The head of each department and agency in the executive branch of the Government shall be personally responsible for an effective program to assure that disloyal civilian officers or employees

are not retained in employment in his department or agency.

*a.* He shall be responsible for prescribing and supervising the loyalty determination procedures of his department or agency, in accordance with the provisions of this order, which shall be considered as providing minimum requirements.

*b.* The head of a department or agency which does not have an investigative organization shall utilize the investigative facilities of the Civil Service Commission.

2. The head of each department and agency shall appoint one or more loyalty boards, each composed of not less than three representatives of the department or agency concerned, for the purpose of hearing loyalty cases arising within such department or agency and making recommendations with respect to the removal of any officer or employee of such department or agency on grounds relating to loyalty, and he shall prescribe regulations for the conduct of the proceedings before such boards.

*a.* An officer or employee who is charged with being disloyal shall have a right to an administrative hearing before a loyalty board in the employing department or agency. He may appear before such board personally, accompanied by counsel or representative of his own choosing, and present evidence on his own behalf, through witnesses or by affidavit.

*b.* The officer or employee shall be served with a written notice of such hearing in sufficient time, and shall be informed therein of



the nature of the charges against him in sufficient detail, so that he will be enabled to prepare his defense. The charges shall be stated as specifically and completely as, in the discretion of the employing department or agency, security considerations permit, and the officer or employee shall be informed in the notice (1) of his right to reply to such charges in writing within a specified reasonable period of time, (2) of his right to an administrative hearing on such charges before a loyalty board, and (3) of his right to appear before such board personally, to be accompanied by counsel or representative of his own choosing, and to present evidence on his behalf, through witness or by affidavit.

3. A recommendation of removal by a loyalty board shall be subject to appeal by the officer or employee affected, prior to his removal, to the head of the employing department or agency or to such person or persons as may be designated by such head, under such regulations as may be prescribed by him, and the decision of the department or agency concerned shall be subject to appeal to the Civil Service Commission's Loyalty Review Board, hereinafter provided for, for an advisory recommendation.

4. The rights of hearing, notice thereof, and appeal therefrom shall be accorded to every officer or employee prior to his removal on grounds of disloyalty, irrespective of tenure, or of manner, method, or nature of appointment, but the head of the employing department or agency may

suspend any officer or employee at any time pending a determination with respect to loyalty.

5. The loyalty boards of the various departments and agencies shall furnish to the Loyalty Review Board, hereinafter provided for, such reports as may be requested concerning the operation of the loyalty program in any such department or agency.

### PART III—RESPONSIBILITIES OF CIVIL SERVICE COMMISSION

1. There shall be established in the Civil Service Commission a Loyalty Review Board of not less than three impartial persons, the members of which shall be officers or employees of the Commission.

*a.* The Board shall have authority to review cases involving persons recommended for dismissal on grounds relating to loyalty by the loyalty board of any department or agency and to make advisory recommendations thereon to the head of the employing department or agency. Such cases may be referred to the Board either by the employing department or agency, or by the officer or employee concerned.

*b.* The Board shall make rules and regulations, not inconsistent with the provisions of this order, deemed necessary, to implement statutes and Executive orders relating to employee loyalty.

*c.* The Loyalty Review Board shall also:

(1) Advise all departments and agencies on all problems relating to employee loyalty.

(2) Disseminate information pertinent to employee loyalty programs.

(3) Coordinate the employee loyalty policies and procedures of the several departments and agencies.

(4) Make reports and submit recommendations to the Civil Service Commission for transmission to the President from time to time as may be necessary to the maintenance of the employee loyalty program.

2. There shall also be established and maintained in the Civil Service Commission a central master index covering all persons on whom loyalty investigations have been made by any department or agency since September 1, 1939. Such master index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted a loyalty investigation concerning the person involved.

a. All executive departments and agencies are directed to furnish to the Civil Service Commission all information appropriate for the establishment and maintenance of the central master index.

b. The reports and other investigative material and information developed by the investigating department or agency shall be retained by such department or agency in each case.

3. The Loyalty Review Board shall currently be furnished by the Department of Justice the name



of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

*a.* The Loyalty Review Board shall disseminate such information to all departments and agencies.

#### PART IV—SECURITY MEASURES IN INVESTIGATIONS

1. At the request of the head of any department or agency of the executive branch an investigative agency shall make available to such head, personally, all investigative material and information collected by the investigative agency concerning any employee or prospective employee of the requesting department or agency, or shall make such material and information available to any officer or officers designated by such head and approved by the investigative agency.

2. Notwithstanding the foregoing requirement, however, the investigative agency may refuse to disclose the names of confidential informants, provided it furnishes sufficient information about such informants on the basis of which the requesting department or agency can make an adequate evaluation of the information furnished by them,

and provided it advises the requesting department or agency in writing that it is essential to the protection of the informants or to the investigation of other cases that the identity of the informants not be revealed. Investigative agencies shall not use this discretion to decline to reveal sources of information where such action is not essential.

3. Each department and agency of the executive branch should develop and maintain, for the collection and analysis of information relating to the loyalty of its employees and prospective employees, a staff specially trained in security techniques, and an effective security control system for protecting such information generally and for protecting confidential sources of such information particularly.

#### PART V—STANDARDS

1. The standard for the refusal of employment or the removal from employment in an executive department or agency on grounds relating to loyalty shall be that, on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States.

2. Activities and associations of an applicant or employee which may be considered in connection with the determination of disloyalty may include one or more of the following:

a. Sabotage, espionage, or attempts or preparations therefor, or knowingly associating with spies or saboteurs;

b. Treason or sedition or advocacy thereof;

c. Advocacy of revolution or force or violence to alter the constitutional form of government of the United States;

d. Intentional, unauthorized disclosure to any person, under circumstances which may indicate disloyalty to the United States, of documents or information of a confidential or non-public character obtained by the person making the disclosure as a result of his employment by the Government of the United States;

e. Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

f. Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons, designated by the Attorney General as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

## PART VI.—MISCELLANEOUS

1. Each department and agency of the executive branch, to the extent that it has not already done so, shall submit, to the Federal Bureau of Investigation of the Department of Justice, either di-

rectly or through the Civil Service Commission, the names (and such other necessary identifying material as the Federal Bureau of Investigation may require) of all of its incumbent employees.

*a.* The Federal Bureau of Investigation shall check such names against its records of persons concerning whom there is substantial evidence of being within the purview of paragraph 2 of Part V hereof, and shall notify each department and agency of such information.

*b.* Upon receipt of the above-mentioned information from the Federal Bureau of Investigation, each department and agency shall make, or cause to be made by the Civil Service Commission, such investigation of those employees as the head of the department or agency shall deem advisable.

2. The Security Advisory Board of the State-War-Navy Coordinating Committee shall draft rules applicable to the handling and transmission of confidential documents and other documents and information which should not be publicly disclosed, and upon approval by the President such rules shall constitute the minimum standards for the handling and transmission of such documents and information, and shall be applicable to all departments and agencies of the executive branch.

3. The provisions of this order shall not be applicable to persons summarily removed under the provisions of section 3 of the act of December 17, 1942, 56 Stat. 1053, of the act of July 5, 1946, 60 Stat. 453, or of any other statute conferring the power of summary removal.



4. The Secretary of War and the Secretary of the Navy, and the Secretary of the Treasury with respect to the Coast Guard, are hereby directed to continue to enforce and maintain the highest standards of loyalty within the armed services, pursuant to the applicable statutes, the Articles of War, and the Articles for the Government of the Navy.

5. This order shall be effective immediately, but compliance with such of its provisions as require the expenditure of funds shall be deferred pending the appropriation of such funds.

6. Executive Order No. 9300 of February 5, 1943, is hereby revoked.

HARRY S. TRUMAN,

THE WHITE HOUSE,  
MARCH 21, 1947.

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### 3. UNITED STATES CIVIL SERVICE COMMISSION

*Washington 25, D. C., December 4, 1947.*

SIR: Part III of Executive Order No. 9835 prescribing procedures for the administration of an employee loyalty program in the Executive Branch of the Government requires the Department of Justice to furnish this Board with—

the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as Totalitarian, Fas-

cist, Communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

In performance of said requirement, the Department of Justice has furnished to this Board a letter from the Attorney General containing the names so designated by him.

Part III of said Executive Order also requires this Board "to disseminate such information to all Departments and Agencies." A copy of said letter from the Attorney General is accordingly enclosed herewith and a copy is also being sent to each other Department and Agency of the Government. This Board is preparing and will shortly forward to you Rules, Regulations and Standards by which you are to be guided.

The President in addressing this Board said, with reference to the names to be furnish by the Department of Justice:

Membership in an organization is simply one piece of evidence which may or may not be helpful in arriving at a conclusion as to the action which is to be taken in a particular case.

In using the names set forth in said letter, you should have in mind these sentiments to which this Board subscribes.

SETH W. RICHARDSON,  
*Chairman, Loyalty Review Board.*

Enclosure.

4. OFFICE OF THE ATTORNEY GENERAL,  
Washington, D. C., November 24, 1947.

Honorable SETH W. RICHARDSON,  
Chairman, Loyalty Review Board,  
Civil Service Commission, Washington, D. C.

MY DEAR MR. RICHARDSON: This is submitted pursuant to the President's Executive Order No. 9835 in which he stated that it is of vital importance that persons employed in the Federal service be of complete and unswerving loyalty to the United States, and further stated that although the loyalty of by far the overwhelming majority of all Government employees is beyond question, the presence within the Government service of any disloyal or subversive person constitutes a threat to our democratic processes. The order provided in Part III, section 3, as follows:

3. The Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

a. The Loyalty Review Board shall disseminate such information to all departments and agencies.

Under a previous Executive order (No. 9300), issued February 5, 1943, entitled "Establishing the Interdepartmental Committee to Consider Cases of Subversive Activity on the Part of Federal Employees," and under other relevant authority, the Department of Justice named a number of organizations as subversive. That list was disseminated among the Government agencies for use in connection with consideration of employee loyalty, and included the following organizations:

American League Against War and Fascism.

American Patriots, Inc.

American Peace Mobilization.

American Youth Congress.

Association of German Nationals (Reichs-deutsche Vereinigung).

Black Dragon Society.

Central Japanese Association (Beikoku Chuo Nipponjin Kai).

Central Japanese Association of Southern California.

Central Organization of the German-American National Alliance (Deutsche-Amerikanische Einheitsfront).

Communist Party of U. S. A.

Congress of American Revolutionary Writers.

Dai Nippon Butoku Kai (Military Virtue Society of Japan or Military Art Society of Japan).

Dante Alighieri Society.

Federation of Italian War Veterans in the U. S. A., Inc. (Associazione Nazionale Combattenti Italiani, Federazione degli Stati Uniti d'America).



Friends of the New Germany (Freunde des Neuen Deutschlands).

German-American Bund (Amerikadeutscher Volksbund).

German-American Vocational League (Deutsche-Amerikanische Berufsgemeinschaft).

Heimuska Kai, also known as Nokubei Heieki Gimusha Kai, Zaibel Nihonjin, Heiyaku Gimusha Kai, and Zaibel Heimusha Kai (Japanese Residing in America Military Conscripts Association).

Hinode Kai (Imperial Japanese Reservists).

Hinomaru Kai (Rising Sun Flag Society—a group of Japanese War Veterans).

Hokubei Zaigo Shoke Dan (North American Reserve Officers Association).

Japanese Association of America.

Japanese Overseas Central Society (Kaigai Dobo Chuo Kai).

Japanese Overseas Convention, Tokyo, Japan, 1940.

Japanese Protective Association (Recruiting Organization).

Jikyoku lin Kai (Current Affairs Association).

Kibei Seinen Kai (Association of U. S. Citizens of Japanese Ancestry who have returned to America after studying in Japan).

Kyffhaeuser, also known as Kyffhaeuser League (Kyffhaeuser Bund), Kyffhaeuser Fellowship (Kyffhaeuser Kameradschaft).

Kyffhaeuser War Relief (Kyffhaeuser Kriegshilfswerk).

Lictor Society (Italian Black Shirts).

Mario Morgantini Circle.

Michigan Federation for Constitutional Liberties.

Namka Teikoku Gunyūdan (Imperial Military Friends Group or Southern California War Veterans).

National Committee for the Defense of Political Prisoners.

National Federation for Constitutional Liberties.

National Negro Congress.

Nichibei Kogyo Kaisha (The Great Fujii Theatre).

Northwest Japanese Association.

Protestant War Veterans of the U. S., Inc.

Sakura Kai (Patriotic Society, or Cherry Association—composed of veterans of Russo-Japanese War).

Shinto Temples.

Silver Shirt Legion of America.

Sokoku Kai (Fatherland Society).

Suiko Sha (Reserve Officers Association, Los Angeles).

Washington Book Shop Association.

Washington Committee for Democratic Action.

Workers Alliance.

Under Part III, section 3, of Executive Order No. 9835, the following additional organizations are hereby designated:

American Polish Labor Council.

American Youth for Democracy.

Armenian Progressive League of America.

Civil Rights Congress and its affiliated organizations, including: Civil Rights Congress for

Texas; Veterans Against Discrimination of Civil Rights Congress of New York.

The Columbians.

Communist Party, U. S. A., formerly Communist Political Association, and its affiliates and committees, including: Citizens Committee of the Upper West Side (New York City); Committee to Aid the Fighting South; Dennis Defense Committee; Labor Research Association, Inc.; Southern Negro Youth Congress; United May Day Committee; United Negro and Allied Veterans of America.

Connecticut State Youth Conference.

Council on African Affairs.

Hollywood Writers Mobilization for Defense.

Hungarian-American Council for Democracy.

International Workers Order, including People's Radio Foundation, Inc.

Joint Anti-Fascist Refugee Committee.

Ku Klux Klan.

Macedonian-American People's League.

National Committee to Win the Peace.

National Council of American-Soviet Friendship.

Nature Friends of America (since 1935).

New Committee for Publications.

Photo League (New York City).

Proletarian Party of America.

Revolutionary Workers League.

Socialist Workers Party, including American

Committee for European Workers' Relief.

Veterans of the Abraham Lincoln Brigade.

Workers Party, including Socialist Youth League.

Your attention is also directed to certain organizations which are operated as schools. While, of course, I am not of the view that any institution of learning, devoted to the advancement of knowledge, is subversive, it appears that these organizations are adjuncts of the Communist Party. They are as follows:

Abraham Lincoln School, Chicago, Illinois.

George Washington Carver School, New York City.

Jefferson School of Social Science, New York City.

Ohio School of Social Sciences.

Philadelphia School of Social Science and Art.

Samuel Adams School, Boston, Massachusetts.

School of Jewish Studies, New York City.

Seattle Labor School, Seattle, Washington.

Tom Paine School of Social Science, Philadelphia, Pennsylvania

Tom Paine School of Westchester, New York.

Walt Whitman School of Social Science, Newark, New Jersey.

After the issuance of Executive Order No. 9835 by the President, the Department compiled all available data with respect to the type of organization to be dealt with under that order. The investigative reports of the Federal Bureau of Investigation concerning such organizations were correlated. Memoranda on each such organization were prepared by attorneys of the Department. The list of organizations herein certified is based on their recommendations as reviewed by the Solicitor General, the Assistant Attorneys General, and the Assistant



Solicitor General, and my subsequent careful study of the recommendations of all.

In connection with the designation of these organizations I wish to reiterate, as the President has pointed out, that it is entirely possible that many persons belonging to such organizations may be loyal to the United States; that membership in, affiliation with or sympathetic association with, any organization designated, is simply one piece of evidence which may or may not be helpful in arriving at a conclusion as to the action which is to be taken in a particular case. "Guilt by association" has never been one of the principles of our American jurisprudence. We must be satisfied that reasonable grounds exist for concluding that an individual is disloyal. That must be the guide.

The organizations named in this letter do not represent a complete or final compilation. For example, a number of small and local organizations are not listed. As to many organizations not named, the presently available information is insufficient to warrant a final determination as to their character. Others, presently innocuous, may become the victims of dangerous infiltrating forces and, as a consequence, become proper subjects for designation. New organizations may come into existence whose purposes and activities are in conflict with loyalty to the United States.

From time to time, therefore, as contemplated and directed by the Executive order, there will be furnished to the Board the names of those additional organizations and groups as to which the information received by this Department, resulting from continued investigation, indicates similar designations are required.

If I can be of further assistance to you in reference to the subject matter of this letter, please let me know.

Sincerely yours,

TOM C. CLARK,  
*Attorney General.*

5. UNITED STATES CIVIL SERVICE COMMISSION  
*Washington 25, D. C., September 21, 1948.*

Memorandum No. 19

*To All Executive Departments and Agencies.*

Subject: Classification according to Section 3, Part III, of E. O. 9835 of Organizations Previously Designated by the Attorney General as within the purview of the Executive Order.

The Attorney General has furnished the Loyalty Review Board with information classifying the organizations which he has listed within the Executive Order under the following categories: (1) Totalitarian; (2) Fascist; (3) Communist; (4) Subversive; (5) Organizations which have "adopted a policy of advocating or approving the commission of acts of force and violence to deny others their rights under the Constitution of the United States"; and (6) Organizations which "seek to alter the form of government of the United States by unconstitutional means."

Enclosed for your information and guidance is a copy of the consolidated list prepared by the Attorney General of organizations previously designated as within Executive Order 9835 by the Attorney General's letters of November 24, 1947, and May 27, 1948 (clarified on August 4, 1948), according to the

classifications of Section 3, Part III, of the Executive Order.

SETH W. RICHARDSON,  
*Chairman, Loyalty Review Board.*

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CONSOLIDATED LIST OF ORGANIZATIONS PREVIOUSLY  
DESIGNATED AS WITHIN EXECUTIVE ORDER NO.  
9835 BY LETTERS OF NOVEMBER 24, 1947, AND MAY  
27, 1948, ACCORDING TO THE CLASSIFICATIONS OF  
SECTION 3, PART III OF THE EXECUTIVE ORDER

*Totalitarian:*

Black Dragon Society.

Central Japanese Association (Beikoku Chuo  
Nipponjin Kai).

Central Japanese Association of Southern  
California.

Dai Nippon Butoku Kai (Military Virtue So-  
ciety of Japan or Military Art Society of  
Japan).

Heimusha Kai, also known as Nokubei Heieki  
Gimusha Kai, Zaibel Nihonjin, Heiyaku  
Gimusha Kai, and Zaibei Heimusha Kai  
(Japanese Residing in America Military  
Conscripts Association).

Hinode Kai (Imperial Japanese Reservists).

Hinomaru Kai (Rising Sun Flag Society—a  
group of Japanese War Veterans).

Hokubei Zaigo Shoke Dan (North American  
Reserve Officers Association).

Japanese Association of America.

Japanese Overseas Central Society (Kaigai  
Dobo Chuo Kai).

Japanese Overseas Convention, Tokyo, Japan, 1940.

Japanese Protective Association (Recruiting Organization).

Jikyoku lin Kai (Current Affairs Association).

Kibei Seinen Kai (Association of U. S. Citizens of Japanese Ancestry who have returned to America after studying in Japan).

Nanka Teikoku Gunyudan (Imperial Military Friends Group or Southern California War Veterans).

Nichibei Kogyo Kaisha (The Great Fujii Theatre).

Northwest Japanese Association.

Peace Movement of Ethiopia.

Sakura Kai (Patriotic Society, or Cherry Association—composed of veterans of Russo-Japanese War).

Shinto Temples.

Sokoku Kai (Fatherland Society).

Suiko Sha (Reserve Officers Association Los Angeles).

*Fascist:*

American Patriots, Inc.

Ausland-Organization der NSDAP, Overseas Branch of Nazi Party.

Association of German Nationals (Reichs-deutsche Vereinigung).

Central Organization of the German-American National Alliance (Deutsche-Amerikanische Einheitsfront).

Citizens Protective League.

Dante Alighieri Society.



Federation of Italian War Veterans in the U. S. A., Inc. (Associazione Nazionale Combattenti Italiani, Federazione degli Stati Uniti d' America).

Friends of the New Germany (Freunde des Neuen Deutschlands).

German-American Bund (Amerikadeutscher Volksbund).

German-American Republican League.

German-American Vocational League (Deutsche-Amerikanische Berufsgemeinschaft).

Kyffhaeuser, also known as Kyffhaeuser League (Kyffhaeuser Bund), Kyffhaeuser Fellowship (Kyffhaeuser Kameradschaft).

Kyffhaeuser War Relief (Kyffhaeuser Kriegshilfswerk).

Lictor Society (Italian Black Shirts).

Mario Morgantini Circle.

*Communist:*

Abraham Lincoln School, Chicago, Illinois.

American League Against War and Fascism.

American Association for Reconstruction in Yugoslavia, Inc.

American Committee for European Workers' Relief.

American Committee for Protection of Foreign Born.

American Committee for Yugoslav Relief, Inc.

American Council for a Democratic Greece.

American Council on Soviet Relations.

American Croatian Congress.

American League for Peace and Democracy.

American Peace Mobilization.

- American Polish Labor Council.
- American Russian Institute (of San Francisco).
- American Slav Congress.
- American Youth Congress.
- American Youth for Democracy.
- Armenian Progressive League of America.
- California Labor School, Inc., 216 Market Street, San Francisco, California.
- Central Council of American Women of Croatian Descent, aka Central Council of American Croatian Women, National Council of Croatian Women.
- Citizens Committee of the Upper West Side (New York City).
- Civil Rights Congress and its affiliates.
- Committee to Aid the Fighting South.
- Communist Party, U. S. A.
- Communist Political Association.
- Connecticut State Youth Conference.
- Congress of American Revolutionary Writers.
- Congress of American Women.
- Council on African Affairs.
- Council for Pan-American Democracy.
- Dennis Defense Committee.
- Friends of the Soviet Union.
- George Washington Carver School, New York City.
- Hollywood Writers Mobilization for Defense.
- Hungarian-American Council for Democracy.
- International Labor Defense.
- International Workers Order, including People's Radio Foundation, Inc.
- Jefferson School of Social Science, New York City.

Jewish Peoples Committee.  
 Joint Anti-Fascist Refugee Committee.  
 Labor Research Association, Inc.  
 League of American Writers.  
 Macedonian-American People's League.  
 Michigan Civil Rights Federation.  
 National Committee for the Defense of Political Prisoners.  
 National Committee to Win the Peace.  
 National Council of Americans of Croatian Descent.  
 National Council of American-Soviet Friendship.  
 National Federation for Constitutional Liberties.  
 National Negro Congress.  
 Nature Friends of America (since 1935).  
 Negro Labor Victory Committee.  
 New Committee for Publications.  
 Ohio School of Social Sciences.  
 People's Educational Association.  
 People's Institute of Applied Religion.  
 People's Radio Foundation, Inc.  
 Philadelphia School of Social Science and Art.  
 Photo League (New York City).  
 Proletarian Party of America.  
 Revolutionary Workers League.  
 Samuel Adams School, Boston, Massachusetts.  
 School of Jewish Studies, New York City.  
 Seattle Labor School, Seattle, Washington.  
 Serbian Vidovdan Council.  
 Slovenian-American National Council.  
 Socialist Workers Party, including American Committee for European Workers' Relief.  
 Socialist Youth League.

Southern Negro Youth Congress.

Tom Paine School of Social Science, Philadelphia, Pennsylvania.

Tom Paine School of Westchester, New York.

United Committee of South Slavic Americans.

United Harlem Tenants and Consumers Organization.

United May Day Committee.

United Negro and Allied Veterans of America.

Veterans of the Abraham Lincoln Brigade.

Walt Whitman School of Social Science, Newark, New Jersey.

Washington Bookshop Association.

Washington Committee for Democratic Action.

Wisconsin Conference on Social Legislation.

Workers Alliance.

Workers Party, including Socialist Youth League.

Young Communist League.

*Subversive:*

Communist Party, U. S. A.

Communist Political Association.

German-American Bund.

Socialist Workers Party.

Workers Party.

Young Communist League.

*Organizations which have "adopted a policy of advocating or approving the commission of acts of force and violence to deny others their rights under the Constitution of the United States":*

Columbians.

Ku Klux Klan.



Protestant War Veterans of the United States.  
Silver Shirt Legion of America.

*Organizations which "seek to alter the form of government of the United States by unconstitutional means":*

Communist Party, U. S. A.

Communist Political Association.

Socialist Workers Party.

Workers Party.

Young Communist League.

6. OFFICE OF THE ATTORNEY GENERAL,  
*Washington, D. C., August 5, 1948.*

HON. SETH W. RICHARDSON,  
*Chairman, Loyalty Review Board,  
United States Civil Service Commission,  
Washington 25, D. C.*

MY DEAR MR. RICHARDSON: This is in further reference to your letters of May 28, 1948, and July 28, 1948, wherein you request particularization with respect to the classification under Section 3, Part III, of Executive Order 9835 of the various organizations designated by me pursuant thereto in my respective letters to you as Chairman of the Loyalty Review Board, dated November 24, 1947, and May 27, 1948. I refer also to our informal discussion on the subject.

Section 3, Part III, of Executive Order 9835, as you have pointed out, sets forth six classifications of organizations within its contemplation. The language of Part V, Section 2f, is substantially identical. Applying the elementary rule of statutory construction, each of these classifications must be taken to be independent and mutually exclusive

of the others. It may well be that a designated organization, by reason of origin, leadership, control, purposes, policies, or activities, alone or in combination, may fall within more than one of the specified classifications. In such cases a reasonable interpretation of the Executive Order would seem to require that designation be predicated upon its dominant characteristics rather than extended to include all other classifications possible on the basis of what may be subordinate attributes of the group. In classifying the designated organizations I have been guided by this policy. Accordingly, it should not be assumed that an organization's dominant characteristic is its only characteristic.

Attached hereto you will find a consolidated list containing the names of all of the organizations previously designated by me as within Executive Order 9835, segregated according to the classifications enumerated in Section 3, Part III, on the basis of dominant characteristics.

In your letter you indicate you have concluded that the fifth category of Section 3, Part III, i. e., organizations which have "adopted a policy of advocating or approving the commission of acts of force and violence to deny others their rights under the Constitution of the United States," is not based upon a question of loyalty and therefore would not come within the purview of the jurisdiction of the Board. I regret I cannot concur in this view. It is implicit within Executive Order 9835 that the criteria enumerated do involve aspects of loyalty which your Board, as well as the departments and agencies concerned, is required to consider in the execution of the duties imposed thereby.

It is not open to the Board nor to any of the executive departments or agencies to disregard any of these criteria. The oath of office taken by every person elected or appointed to any office of honor or profit either in the civil, military, or naval service, except the President of the United States, as prescribed by the Act of May 13, 1884 (Sec. 16, Title 5, United States Code) includes the following language:

I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same \* \* \*

It is difficult to reconcile informed membership or activity in any organization designated "as having adopted a policy of advocating or approving a commission of acts of force or violence to deny others their rights under the Constitution of the United States" as consistent with loyalty to the Government of the United States or fulfillment of the oath of office taken by each employee of its executive departments and agencies.

I trust that this amplification of the designations previously made by me will serve to remove some of the difficulties which you state you have experienced. If I can be of any further assistance in this regard please do not hesitate to call upon me.

Sincerely,

(S) TOM C. CLARK,  
*Attorney General*

Enclosure No. 437091.